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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~338~~ 73

FREDERICK MEISSNER, CHARLES F. ACKERMANN AND CHARLES F. L. MEISSNER, APPELLANTS,

vs.

HERMAN BRUN, MASTER OF THE NORWEGIAN BARQUE "GAZELLE."

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED OCTOBER 5, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 25, 1887.

the cargo of said vessel, the said cargo being now on board said vessel, in a cause of contract and lien for damages, civil and maritime, and therein doth allege articulately as follows:

1st. That said vessel, then lying in the port of Baltimore in charge of said libellant as master thereof and lawful bailee thereof in possession for the owners thereof, was by a charter party, dated the 16th of June, 1881, chartered to Messrs. Meissner, Ackermann & Co. for a voyage from said port of Baltimore to a safe, direct Norwegian or Danish port, as ordered on signing bills of lading, or as near thereto as she could safely get, and always lay and discharge afloat, as will appear by a copy of said charter, hereto annexed as part of this libel.

2nd. That said charter was signed on said 16th of June by this libellant, as master of said vessel, and by said Meissner, Ackermann & Co., as charterers.

3rd. That among other things in said charter contained it is provided that the whole of said vessel is chartered to said firm,
4 with the exception of deck, cabin, and necessary room for the crew and provisions for a voyage, as above herein in the 1st article stated; that said vessel should be tight, staunch, strong, and every way fitted for the voyage; that the charterers should provide the vessel a full and complete cargo of refined petroleum in customary barrels; that the charterers should pay for the use of the vessel 3 shillings 3 pence, British sterling, with 5 per cent. primage per forty gallons gross, American gauge, payable in cash on right delivery of the cargo, without discount, on each and every barrel, whether delivered full, partly full, or empty; that lay days for loading and discharging should be as follows: Commencing from the time the vessel is ready to load or receive cargo and written notice given and to expire on the 6th of July, running days for loading at Baltimore, and customary dispatch for discharging at port of discharge; that for each and every day's detention by default of charterers eleven pounds British sterling per day, day by day, should be paid by the charterers or agents to said master or agents, the captain having a lien on the cargo for freight, dead freight, and demurrage.

4th. And this libellant further alleges that said charterers did provide said vessel with a full cargo of refined petroleum, as specified in the charter party, and that the same was expeditiously and properly received by the vessel, said loading being completed on the 6th of July, 1881, at 12 noon; that the vessel was staunch, strong,
5 tight, and every way fitted for the voyage aforesaid in charter and the terms of said charter fully performed by and on behalf of the vessel in all respects.

5th. That on the 6th day of July, 1881, the charterers tendered to the libellant bills of lading for said cargo to be signed by him, and on said bills of lading the charterers ordered said vessel to the port of Aalborg, in Denmark, as the port of discharge for said cargo, the bills of lading stating: To be landed at Aalborg or as near thereto as the vessel can safely get.

6th. That said master, the libellant, refused to sign said bills of lading for the reason expressed *to* said charter; that Aalborg was not a safe port and that it was impossible for said vessel to enter

said port with cargo or to land said cargo at said port or at any anchorage or landing place near said port, so as always to lay and discharge afloat, and said libellant declared to said charterers that said vessel as loaded drew 16 feet of water; that the port of Aalborg had a depth at high spring tide of only 11 feet, and said libellant demanded to be ordered to a safe port within the meaning of the charter.

7th. That said master, the libellant, duly protested, by marine protest, against the said actions of the charterers, and has expressed constantly to the charterers his willingness to perform the charter and his refusal to go to Aalborg as not a safe port and not within the charter.

8th. And this libellant further alleges that his said refusal to sign for Aalborg was based on truth and fact and on said charter;

6 that said port has a depth ordinarily of 10 feet and 11 feet on a high tide; that there is no landing place or anchorage near said port where said vessel could always lay and discharge afloat.

That his vessel as loaded draws 16 feet and in ballast 12 feet, and it is physically and absolutely impossible for said vessel to enter said port or any part of the same, and that there is no safe place outside said port where said vessel could lay always afloat and discharge said cargo.

9th. That said bills of lading were tendered to libellant on the 6th day of July, 1881, and the libellant has endeavored in every way to convince said charterers that they had no right to order said vessel to Aalborg and has requested them to order him to a safe port within the terms of the charter; all of which the charterers have disregarded and have declined to order the vessel elsewhere than to Aalborg, and demand that libellant shall sign the bill of lading as presented by them for that port.

10th. That by said default on the part of the charterers the said vessel has been detained from the 7th day of July, 1881, to the day of the filing of this libel, and thereby demurrage at the rate of £11 British sterling per day has been and is due and unpaid by the said charterers, amounting to the sum of $266.75, and libellant claims $350.

That all and singular the matters above alleged are true

7 and within the civil and maritime jurisdiction of this court.

Wherefore libellant prays that process *in rem* may issue against said 3,131 barrels of refined petroleum, the cargo of said vessel, and monition against all persons claiming any interest therein, and that said 3,131 barrels, cargo of said vessel, or so much thereof as may be necessary, be sold to pay said claim of libellants and costs, and that the court will decree for said claim, with costs, and that he may have such further and other relief as his case may require.

H. BRUN.

A. STIRLING, JR.,
Solicitor for Libellant.

Charter party above referred to is as follows:

7½ Petroleum.

Dresel, Rauschenberg & Co., 37 South Gay street, Baltimore, Md.

This charter party, made and concluded upon in the city of Baltimore, Md., the 16th day of June, in the year one thousand eight hundred and eighty-one, between Captain H. Brun, of the Norw. b'k "Gazelle," of Bergen, of the burthen of 571 tons, or thereabouts, registered measurement, classed A2* *nor veritas*, now lying in the harbor of Baltimore, of the first part, and Mess. Meissner, Ackermann & Co., of the second part, witnesseth: That the said party of the first part agrees on the freighting and chartering of the whole of the said vessel (with the exception of the deck, cabin, and necessary room for the crew and stowage of provisions, sails, and cables) or sufficient room for the cargo hereinafter mentioned, unto said party of the second part for a voyage from this port of Baltimore, Md., to a safe, direct Norwegian or Danish port as ordered on signing b. chg. (or as near thereunto as she can safely get and always lay and discharge afloat) on the terms following, viz: The said vessel shall be tight, staunch, strong, and every way fitted for such a voyage, and receive on board during the aforesaid voyage the merchandise hereinafter mentioned. The said party of the second part doth engage to provide and furnish to the said vessel a full and complete cargo of refined petroleum, in customary barrels, and the party of the second part, or agent, to pay to the said party of the first part, or agent, for the use of said vessel during the voyage aforesaid 3.3, three shillings & three pence, all British sterling, with five per cent. primage per forty gallons, gross American gauge, payable in cash on right delivery of cargo, without discount or allowance, on each and every barrel, whether delivered full, part full, or empty.

It is agreed that the lay days for loading and discharging shall be as follows, commencing from the time the vessel is ready to receive or discharge cargo, and written notice given, & to expire the 6th of July, for loading at Baltimore, and customary dispatch for discharging at port of discharge; and that for each and every day's detention by default of said party of the second part, or agent, (11) eleven pounds British sterling per day, day by day, shall be paid by said party of the second part, or agent, to said party of the first part, or agents, captain having a lien on the cargo for freight, dead freight, and demurrage; the cargo or cargoes to be received and delivered alongside of the vessel within reach of her tackles; lighterage, if any, always to be at the risk and expense of cargo; bills of lading to be signed at any rate, as required by charterers, without prejudice to this charter; any difference to be settled in cash, less insurance; if in captain's favor, before vessel sails; if in charterer's favor, by captain's draft upon his consignees, payable ten days after arrival of vessel at port of discharge, vessel to haul once to loading berth at her own expense; any subsequent hauling expense to be paid by charterers; vessel to load under inspection as to stowage by the authorized inspectors appointed by the U. S.

Petroleum Association or by charterers, free of charge to vessel for such inspection, and the captain not to be responsible for leakage or breakage; sufficient cash to be advanced to the captain, at Baltimore, if required, for ship's ordinary disbursements, subject to 2½ % commission & insurance. A commission of five per cent. upon the amount of this charter and the usual freight brokerage payable by the vessel is due Dresel, Rauschenberg & Co. upon signing hereof; vessel to employ at port of destination Dresel, Rauschenberg & Co.'s friends as brokers for attending to ship's business on customary terms.

To the true and faithful performance of all and every of the foregoing agreement we, the said parties, do hereby bind ourselves, our heirs, executors, administrators, and assigns, each to the other, in the penal sum of estimated amount of freight.

In witness whereof we hereunto set our hands the day and year first above written.

(Sig.) H. BRUN.
" MEISSNER, ACKERMANN & CO.

Signed in the presence of—
(Sig.) H. A. RANSPERG.
" VINCENT LOESER.

We hereby certify this to be a true and correct copy of original charter party in our possession.

DRESEL, RAUSCHENBERG & CO.

[Endorsed:] Copy. Petroleum charter party of the Nor. bark Gazelle, H. Brun, master, from Baltimore to ——. Baltimore, June 16th, 1881. Dresel, Rauschenberg & Co., ship brokers, 37 South Gay street, Baltimore, Md.

8 *Amended and Additional Libel. Filed* 1 *August*, 1881.

In the District Court of the United States for the Maryland District.
In Admiralty:

To the Honorable Thomas J. Morris, judge:

Herman Brun, master of the Norwegian barque Gazelle, now lying in the port of Baltimore, files this his amended and further and additional libel on behalf of himself and of the owners of said vessel against 3,131 barrels of refined petroleum, the cargo of said vessel, the said cargo being now on board said vessel and in the custody of the United States marshal of the Maryland district under process in the original and first libel, filed by said libellant in this honorable court on the 11th of July, 1881, in a cause of contract and lien for demurrage, civil and maritime, and therein doth allege and propound articulately as follows:

1st. That said vessel therein lying in the port of Baltimore in charge of said libellant, as master thereof and lawful bailee thereof for the owners thereof, was by a charter party, dated the 16th of

June, 1881, chartered to Messrs. Meissner, Ackerman and Company for a voyage from said port of Baltimore to a safe direct Norwegian or Danish port, as ordered on signing bills of lading, or as near thereto as she could safely get, and always lay and discharge
9 afloat, as will appear by a copy of the said charter party annexed to the said original libel filed as aforesaid.

2nd. That said charter party was signed on said 16th of June by this libellant as master of said vessel and by said Meissner, Ackermann & Company.

3rd. That, among other things in said libel contained, it was provided that the whole of said vessel was chartered to said firm, with the exception of deck, cabin, and necessary room for crew and provisions, for a voyage as above, in the 1st article, stated; that said vessel should be tight, staunch, and every way fitted for the voyage; that the charterers should provide the vessel with a full and complete cargo of refined petroleum in customary barrels; that the charterers should pay for the use of the vessel 3 shillings 3 pence, British sterling, for forty gallons gross, American gauge, payable in cash on right delivery of the cargo, without discount, on each and every barrel, whether delivered full, partly full, or empty.

That lay days for loading and discharging should be as follows: Commencing from the time the vessel is ready to load or receive cargo and written notice given, and to expire on the 6th day of July, 1881, running days — loading at Baltimore, and customary dispatch for discharging at port of discharge.

4th. That it was also provided in said charter party, among other things, that for each and every day's detention by default of the charterers eleven pounds, British sterling, per day, day by day, should be paid by the charterers or agents to said master or
10 agents, the captain having a lien on the cargo for freight, dead freight, and demurrage.

5th. And this libellant further alleges that said charterers did provide the vessel with a full cargo of refined petroleum as specified in the charter party, and that the same was expeditiously and properly received by the vessel, said loading being completed on the 6th of July, 1881, at 12 noon; that the vessel was and is staunch, tight, strong, and every way fitted for the voyage specified in the charter, and that all the terms of the charter have been fully performed by and on behalf of the vessel in all respects.

6th. That on the 6th of June, 1881, the charterers tendered to the libellant bills of lading for said cargo, consisting of 3,131 barrels, and on said bills of lading the charterers ordered said vessel to the port of Aalborg, in Denmark, as the port of discharge for said cargo, the bills of lading so tendered stating, Bound for Aalborg or as near thereto as the vessel can safely get; and afterwards presented to Capt. ——, July 30th; the charterers inserted after the word "get" the words "and always lay and discharge afloat."

7th. That the libellant refused to sign said bills of lading for the reason expressed to the charterers and their agents—that Aalborg was not a safe port, and that it was impossible for said vessel to enter said port with cargo or to land said cargo at said port or at any

anchorage at said port or at any anchorage or landing place near said port where she could safely get and always lay and discharge afloat; and said libellant declared to said charterers and other agents that said vessel as so laden drew 16 feet of water and 12 feet in ballast; that the port of Aalborg had a depth at high spring tide of only 11 feet at its entrance, and libellant demanded to be ordered to a safe port within the meaning of the charter party.

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8th. That said libellant duly protested by marine protest against the said action of the charterers and expressed continually since his willingness to perform the charter and his refusal to go to Aalborg as not a safe port and not within the charter.

9th. And this libellant further alleges that his said refusal to sign for Aalborg was based on truth and fact and on said charter; that the said port has a depth at its entrance ordinarily of 10 feet and 11 feet on highest tide; that there is no landing place or anchorage near said port where said vesssl could safely get and always lay and discharge afloat.

That the only anchorage of said port, which anchorage is not the port and is no part of the port, is the open water of the Kattegat, a place open on all sides seaward and closed only by the sea shore, along which it waters flow; that the only claim it has to be called an anchorage is that the water is shallow enough to drop an anchor, and that vessels of large size, such as the Gazelle, are liable in anchoring there to be driven off by the winds and gales, liable to draw anchor or go ashore, or be compelled at any moment to raise anchors, get under way, and put out into the open sea, and the Gazelle, if taken there to anchor and unlade into scows, lighters, or small vessels, would be so taken and unladed in peril of partial or entire destruction, and that said vessel as loaded under the charter draws 16 feet and draws in ballast 12 feet.

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10. That said port is known among mariners and insurers as not a safe port for any vessel except those drawing less than ten feet of water, and is not a safe port except for such vessels, and that any vessel drawing over 10 feet of water could only unlade cargo in the anchorage, in the 9th article mentioned, by transferring it while at anchor in the open Kattegat into small coasting vessels.

That the use of scows or anything ordinarily known as a lighter is impossible at said anchorage.

11th. That libellant has endeavored since said 6th of July in every way to convince said charterers that they had no right to order said vessel to Aalborg, and has requested them to order him to a safe port; that by request of the charterers he has received and considered their views on the subject, and correspondence and conference has gone on between said charterers and libellant at the request of the charterers, libellant always, however, insisting on the said facts above referred —, and refusing to sign for Aalborg, and the charterers taking no steps to unlade the cargo and failing to name a safe port.

That libellant, in an effort to adjust the difference, offered to sign the bills with a protest on their face as to the port of discharge, and

to have the question adjusted in this court on the libel here-
13 tofore filed by him with an additional libel for the further delay; and he also offered to sign for Aalborg or the nearest safe port, both which offers the charterers declined, and that the charterers still insist that libellant shall sign the bills as presented, and fail and refuse to order the vessel to a safe port.

13th. That by said default of the charterers the said vessel has been detained from the 6th of July, 1881, to the day of filing this libel, and that demurrage, at the rate of £11 British sterling per day, has been and is due to said libellant by said charterers under a lien on said cargo amounting to the sum of fourteen hundred dollars.

And that the said vessel and owners have actually been damaged by said default of the charterers in so detaining the said vessel in breach of the said charter and by the said breach of said charter in an amount equal to the said sum of $1,400, and libellant claims $1,400.

14th. That all and singular the premises, matters, and things above alleged are true and within the admiralty and maritime jurisdiction of this court.

Wherefore libellant prays that process *in rem* may issue against said 3,131 barrels of refined petroleum, the cargo of said vessel, and monition against all persons claiming any interest therein, and that said 3,131 barrels of petroleum, cargo of said vessel, or so much thereof as may be necessary, be sold to pay the said claim of libel-
lant and costs, and that the court will decree for his said
14 claims with costs, and that he may have such other and further relief as his case may require.

H. BRUN.

A. STIRLING, JR.,
Proctor for Libellant.

The foregoing libel is thus endorsed:

"The filing of this amended and supplementary libel assented to as if filed by leave of the court under the rule.

S. T. WALLIS,
For Cargo and Resp'd'ts."

15 *Answer. Filed 2nd August,* 1881.

In the District Court of the United States, District of Maryland, *sct:*
In Admiralty.

To the Honorable Thomas J. Morris, judge of the district court of the United States for the district of Maryland:

And now come Frederick Meissner, Charles F. Ackermann, and Charles F. L. Meissner, partners trading under the firm name and style of Meissner, Ackermann & Company and carrying on business in the city and State of New York, owners of the 3,131 barrels of refined petroleum now laden on board the barque Gazelle, lying at the port of Baltimore, and which have been heretofore libelled in this honorable court by Herman Brun, master of the Norwegian

barque Gazelle, and for answer to said libel and amended libel against said 3,131 barrels of refined petroleum do allege and articulately propound as follows, to wit:

1st. That they, the said Meissner, Ackermann & Company, are the true and *bona fide* owners of said 3,131 barrels of refined petroleum, and that no other person is the owner thereof.

2nd. That each and every allegation of the 1st, 2nd, 3rd, 4th, and 5th articles of said libel and amended libel are true as made, provided only that the last portion of the fourth article of the
16 original libel and of the fifth article of the amended libel is only true in so far as it applies to the condition of the vessel as conforming to the terms of the charter party; in no other regard did she fully perform the terms of the charter party.

3rd. That the said master did refuse to sign the bills of lading to Aalborg tendered to him for signature by these respondents, as alleged in the 6th article of said libel and 7th of the amended libel, and pretended, as an excuse for his refusal so to sign that said port of Aalborg was not a safe port within the terms of the charter party, as stated in said 6th article of the libel and 7th of the amended libel.

4th. These respondents know nothing of the protest alleged in the 7th article of said libel and 8th of the amended libel, but presume it was made as therein stated. They admit that the said master did express a willingness to perform the charter, as therein alleged, but they say, notwithstanding said expressed willingness, he did not and would not perform it when requested and has constantly refused to perform it by signing bills of lading to Aalborg, as by the terms of said charter party he was bound to do.

5th. These respondents deny, as in the 8th article of said libel and the 9th of the amended libel alleged, that the refusal of said master to sign for Aalborg was based on truth and fact and on said charter; on the contrary, they allege that his said refusal was in direct and open violation of said charter. They allege that said port
17 of Aalborg is a safe port, well known to commerce, especially in the petroleum trade, and one to which vessels much larger and of deeper draught than the "Gazelle" are in the habit of being constantly dispatched under charter parties of like terms with that in controversy. They aver that they have themselves frequently chartered and despatched vessels of large draught (up to twenty feet) to Aalborg under charters containing similar provisions, and that said vessels and other vessels of like draught have proceeded to said port and there discharged, and have not found any difficulty in getting to said port or to some point near thereto where they could safely get and always lay and discharge afloat; and respondents further propound that according to the established, well recognized, and uniform understanding, usage, and custom of the trade between the port of Baltimore and other Atlantic ports of the United States and the Kingdom of Norway and Denmark the port of Aalborg is recognized as and understood to be a safe direct port of Denmark, and to be comprehended as such within and by such terms and provisions as are contained in the charter party in this case, so that

whenever such terms and provisions are used and agreed on as said charter party contains it is the uniform commercial understanding and usage that said port of Aalborg is embraced in and covered thereby, and that all masters of vessels executing such charter parties are bound thereunder to sign bills of lading to Aalborg if so ordered. Respondents declare that they entered into said charter party in good faith, with such understanding, believing that the port of
18 Aalborg was embraced by its terms and intending that it should be so embraced, and they aver that they had and have no reason to doubt that such was then the understanding of the master of said barque. They will accordingly insist that by the terms and provisions of said charter party in itself, as well as explained and interpreted by the commercial usage and understanding aforesaid, they had the right to order said barque to Aalborg and to require the master to sign bills of lading therefor, and that he committed a breach of said charter party to the great damage of respondents by his refusal so to do.

Respondents deny the further statement in said 8th article in said libel and 9th of the amended libel, to the effect that there is no safe place or anchorage outside said port where said vessel could lay always afloat and discharge said cargo. They say, on the contrary, that there is a perfectly safe place and anchorage outside said port, not only where said vessel could lay always afloat and discharge her cargo, but one where vessels of the deepest draught not only can but do constantly lie and discharge afloat in safety; that this fact is thoroughly well known to the libellant and to every one acquainted with those waters and said port, and so safe is it that even companies dealing in marine insurance do not require a premium upon their policies which would indicate any extra hazard.

5¾. These respondents admit, as in the 11th article of the amended libel alleged, that the libellant has endeavored to convince the
19 respondents that they had no right to order said vessel to Aalborg, and that a good deal of correspondence and conference has gone on on the subject, and that they persisted in claiming that they had such right and refused to order her to any other port. They deny that libellant ever offered to sign bills for Aalborg with a protest on their face. On the contrary, they allege that he has always refused and still refuses to sign any bills of lading which did not on their face give him the privilege of going "to the nearest safe port," and that, too, after stating that he could not go to Aalborg and would not if he was permitted to sign such bills of lading. These repondents, on the contrary, have offered to accept bills of lading to Aalborg signed under protest or to allow the master to sail without signing, both or either of which he refused to do and still refuses, in direct violation of the terms of his contract of charter. As to the depth of water at said port these respondents, having no personal knowledge in respect thereto, do not admit the same to be true.

6th. These respondents admit that they refused to tender said master bills of lading to any other port than Aalborg, and that said master offered to go to another port. They say, however, that they were under no obligation to tender to the said master bills of lading

to another port because he happened to prefer Aalborg, especially when it would not possibly have been done without great loss to respondents, who had already sold said cargo to arrive. Having offered bills to a safe port and one falling within the terms of
20 the charter party, it was the master's duty to sign them and he had no right to ask to have them changed to another port.

7th. They deny that there has been any detention of said vessel by their default. On the contrary, they were always willing and anxious to have her sail either with or without bills of lading, and have frequently requested the master to sail, but he has persistently refused and still refuses to do so, and thereby has greatly injured these respondents, while any loss which he may have suffered is altogether due to his own default.

8th. That all and singular the premises are true.

Wherefore the respondents pray that the marshal shall be decreed to deliver to them the possession of said 3,131 barrels of refined petroleum; that your honor will pronounce against said libel, and that they may be hence dismissed with their reasonable costs.

S. T. WALLIS,
Proctor for Resp'd'ts.

Affidavit waived.

A. S., JR., *For Libellant.*

21 *Additional and Amended Libel. Filed 9th August*, 1881.

District Court, Maryland. Admiralty.

To the Hon. T. J. Morris, judge:

The amended and additional libel of Herman Brun, master of the barque Gazelle, against 3,131 barrels of refined petroleum, cargo of said vessel, shows articulately as follows:

1st. This libellant alleges, as is already alleged *and* his original and amended and additional libel heretofore filed as if the contents thereof were herein repeated, and he alleges further that since the filing of said additional libel the said vessel has been detained at Baltimore by the default of the charterers, who have continued to repeal and refuse to order the vessel to a safe port, and have delayed and invited further correspondence about the ordering of the vessel, and have not tendered any bill of lading for any safe port, according to the charter, and have not either complied in such respect with the charter or removed their cargo from the vessel, by which default of the charterers there has *incurred* to this libellant under the terms of the charter a further demurrage of $395.20, and the owners have been damaged by said default since the filing of said amended and additional libel in the sum of $395.20, which damage is a lien
22 on said cargo, and libellant claims additional damage in the sum of $395.20, and claims as damage by demurrage to date $1,795.20.

Wherefore libellant prays process against said cargo and monition against all persons interested, and that the court will decree for his said claim, with interest and costs, and that the said cargo may be sold to pay the same, and for further relief.

A. STIRLING, JR.,
Proctor for Libellant.

23 *Stipulation. Filed* 20 *August*, 1881.

THE UNITED STATES OF AMERICA, *District of Maryland,* } *To wit:*

Be it remembered that on this 20th day of August, in the year of our Lord one thousand eight hundred and eighty-one, before me, Rob't Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit in and for the Maryland district, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear William T. Poole, No. 58 Exchange Place, and Thomas Poultney, Jr., No. 9 South Gay street, both of Baltimore, Maryland, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of three thousand one hundred and eighty-seven dollars for the claimants of eight hundred and fifty barrels of petroleum now in the custody of the marshal of said district, being part of the cargo of the Norwegian barque Gazelle, unto Herman Brun, master of the Norwegian barque Gazelle, to perform and fulfill the final order and decree of the said district court, and, in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit
24 in and for the Maryland district, and, in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now pending in the said district court, wherein the said Herman Brun, master of the Norwegian barque Gazelle, is libellant, and the Claimants of the said eight hundred and fifty barrels of petroleum now in the custody of the marshal of said district, being part of the cargo of the Norwegian barque Gazelle, are respondents, and unless they so do they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattels, lands, and tenants, wheresoever found or to be found.

Acknowledged before—

[L. S.]

ROB'T LYON ROGERS,
U. S. Commissioner for Maryland.

25 *Additional and Supplementary Libel. Filed* 22 *August*, 1881.

In the District Court of the U. S. for Maryland. In Admiralty.

Herman Brun, master of the Norwegian bark "Gazelle," exhibits this his additional and further supplementary libel against 3,131 barrels refined petroleum, cargo of said bark, and therein alleges as follows:

1st. Libellant *refuses* to and herein repeats and alleges all the allegations of his preceding libels, and for further cause of lien and libel alleges that since the filing of his last libel the marshal of the district has removed from the vessel under process 850 barrels of said cargo, and the charterers have on the 20th of August filed claim and stipulation thereof; that this libellant has repeatedly notified the charterers since the filing of his said libels that the marshal would, under libellant's orders, remove so much of the cargo as would cover double in value of the amount of demurrage claimed by libellants, and the delay in the marshal's moving the same has been wholly due to correspondence passing between libellant and charterers and the request of charterers to delay taking out the cargo under the process in the marshal's hands.

That libellant has repeatedly notified charterers to remove their cargo, as they had failed to order him to a port of discharge within the charter party.

26 That the marshal finished taking out said barrels on Saturday, the 13th day of August, of all of which charterers were notified and were aware of as the work went on; that libellant since said day has carefully been removing the rest of the cargo as fast as possible, and it will be all removed by the 22 or 23 of August.

That this has been necessary because of the neglect of the charterers, tho' notified, to take charge of and remove the cargo, and charterers have utterly failed to do anything to diminish damage or loss on the cargo, and by failure to stipulate until the 20th of August have without cause delayed the said vessel, and thereby said libellant has become entitled to claim, as demurrage under said charter, the further sum of £55 for five days' demurrage by default of charterers, equal to $275 in currency, and libellant has been obliged to store said cargo and insure the same to save risk and loss, and has thereby incurred expense, and also has been obliged to incur expense in having part of the barrels recoopered; all of which expense will amount to about four hundred dollars, and damage by said delay has been suffered by the vessel and owners to amount equal to the said amount of demurrage.

And libellant prays process against said cargo for this further demurrage, and that the court will pronounce for his said claim with costs, and that he may have such other and further relief as his case may require, and libellant claims $275.

A. STIRLING, Jr.,
Proctor for Libellant.

27 *Answer to Amended Libels. Filed* 23 *August*, 1881.

In the District Court of the United States for the District of Maryland.

HERMAN BRUN, Master of the Norwegian Barque "Gazelle,"

vs.

3,131 BARRELS OF REFINED PETROLEUM.

To the Honorable Thomas J. Morris, judge of the district court of the United States for the district of Maryland:

The answer of Frederick Meissner, Charles F. Ackermann, and F. L. Meissner, partners trading as Meissner, Ackermann and Company, to the libellant's amended and additional libels filed in the above-entitled cause on the 9th and 22nd days of August, respectively, alleges and articulately propounds as follows, to wit:

1st. These respondents again repeat each and every of the allegations contained in their answer filed in the above-entitled cause on the 2nd day of August, 1881, and pray that said answer may be taken and considered as if it and all the averments thereof were herein again incorporated as a part of this their answer.

2nd. For answer to the libel of August 9th, 1881, respondents say they admit that said vessel has been delayed in Baltimore
28 for the period named therein, and that they did not remove the cargo or any part of it. They deny, however, that such detention was in any respect due to their default or that they were under any obligation to remove said cargo. They allege that said detention, and any loss or injury which may have resulted therefrom, was due wholly to the neglect and default of the libellant and his refusal to comply with the contract of charter by signing bill of lading to Aalborg or as near thereto as his vessel could always safely get and lay and discharge afloat, the said port of Aalborg being a safe port within the meaning of said charter party.

3rd. For answer to the libel of August 22nd, 1881, these respondents say they admit that 850 barrels of petroleum were removed from said vessel by the marshal, for which they stipulated as alleged, and further that they were duly notified of the intention of the libellant to have the same removed by the marshal. They further admit that they were notified to remove the balance of the cargo from the vessel and did not do it, and that it was removed by the libellant. They deny, however, that any delay on the part of the marshal in removing the 850 barrels or any delay whatever was caused as alleged by correspondence passing between the libellant and charterers. They allege that neither correspondence or their failure to stipulate as alleged until August 20th had anything to do with causing said delay, but that the whole of said cargo could have been removed as readily when the original libel
29 was filed as when it was removed. They say that the entire delay and the damages, if any, resulting therefrom was due solely to the default of the libellant and was wholly without excuse.

4th. That all and singular the premises are true. Wherefore the respondents pray to be hence dismissed with their costs.

S. T. WALLIS,
H. C. KENNARD,
Proctors for Resp'd'ts.

Affidavit waived.

A. S., JR., *For Libellant.*

30 *Stipulation. Filed August 24th*, 1881.

THE UNITED STATES OF AMERICA, }
District of Maryland, } *To wit:*

Be it remembered that on this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and eighty-one, before me, George Morris Bond, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appeared Thomas Poultney, Jr., and William T. Poole, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of five hundred and fifty dollars, for the claimants of the 3,131 barrels refined petroleum unto Herman Brun, master of the Norwegian Barque "Gazelle," to perform and fulfil the final order and decree of the said district court, and, in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit in and for the Maryland district, and in case of an
31 appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States in a certain cause now pending in the said district court, wherein the said Herman Brun is libellant and the claimants of the said 3,131 barrels of refined petroleum are respondents; and unless they do so they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattels, lands, and tenements, wheresoever found or to be found.

Acknowledged before me this 24th day of August, 1881.

GEORGE MORRIS BOND,
U. S. Commissioner in and for the District of Maryland.

UNITED STATES OF AMERICA, }
District of Maryland, } *ss:*

Before the subscriber, United States commissioner for the district of Maryland aforesaid, personally appeared this 24th day of August, 1881, Thomas Poultney, Jr., and William T. Pool, and made oath

in due form of law that they are severally worth the sum of $550 in real or personal estate within this district over and above their liabilities.

[L. S.] GEORGE MORRIS BOND,
United States Commissioner for Maryland.

32 *Cross-Libel.*

In the District Court of the United States, District of Maryland, *sct:*
In Admiralty.

MEISSNER, ACKERMANN & CO. *vs.* BARQUE "GAZELLE."

Libel. Filed 20 August, 1881.

To the Honorable Thomas J. Morris, judge of the district court of the United States for the district of Maryland:

Frederick Meissner, Charles F. Ackermann, and Charles F. L. Meissner, partners trading as Meissner, Ackermann & Company, exhibit this their libel in a cause of contract, civil and maritime, against the Norwegian barque "Gazelle," now lying at the port of Baltimore in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, whereof Herman Brun now is or lately was master, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein; and thereupon the said Meissner, Ackermann & Company do allege and articulately propound as follows, to wit:

1st. That on or about the 16th day of June, in the year 1881, the said barque "Gazelle," whereof the said Herman Brun was master, being then in the port of Baltimore aforesaid, the said Her-
33 man Brun, as such master and as agent, duly authorized of the owners thereof, entered into a certain charter party with the libellants for and on behalf of the owners of said barque (a copy of which said charter party is herewith filed as a part of this libel), wherein it was, among other things, stipulated and agreed that the said Herman Brun, master as aforesaid and acting as agent for said owners, agreed on the freighting and chartering of the whole of said barque (with the exception of the deck, cabin, and necessary room for the crew and storage of provisions, sails, and cables) or sufficient room for the cargo of refined petroleum therein mentioned to be furnished by the libellants for a voyage from said port of Baltimore, in which said barque was then lying as aforesaid, to a safe, direct Norwegian or Danish port as ordered on signing bills of lading or as near thereto as said vessel could safely get and always lay and discharge afloat, as will appear by the copy of the charter party herewith filed. It was therein also further stipulated by the master, acting as aforesaid, that said barque should be tight, staunch, strong, and every way fitted for said voyage, and should receive on board a full and complete cargo of refined petroleum in customary barrels, to be carried to the stipulated port in said barque, the libellants

paying for the use of said vessel during said voyage three shillings and three pence, all British sterling, with five per cent. primage per forty gallons, gross American gauge, payable in cash on right delivery of cargo, without discount or allowance, on each and every barrel, whether delivered full, part full, or empty.

34 2nd. By said contract of charter demurrage was to be at the rate of eleven pounds British sterling day by day, beginning at Baltimore after July 6th, 1881, and at the port of discharge after the expiration of the customary time for unloading such a cargo. The captain was to have a lien on the cargo for freight, dead freight, and demurrage, and the vessel was to load under inspection as to stowage by the authorized inspector appointed by the United States Petroleum Association or by these libellants free of charge to vessel for such inspection.

The master was not to be liable for leakage or breakage, and he was to receive a commission of 2½ per cent., all of which is fully set out in the copy of said charter party herewith filed.

3rd. These libellants further allege that a cargo of 3,131 barrels of refined petroleum in customary barrels was duly provided and furnished by them to said barque in accordance with the terms of said charter party, and the whole of it was put on board said barque and loaded in accordance with the charter by the 6th day of July, 1881, at twelve o'clock noon, and said vessel could and should have sailed on that day had the master complied with the contract of charter on his part.

4th. These libellants further show that although they had complied with each and every of the terms of said charter party to be performed by them prior to the sailing of said vessel so as to entitle them to demand that said barque should sail to any direct port in Norway or Denmark that they should require within the

35 terms of said charter, and although such a port was so designated by them to said master, yet the master utterly failed and refused to sail for the port so designated under pretence that the same was not a safe port within the meaning of the charter party, and has actually filed in this honorable court a libel against the cargo so as foresaid laden on board of said barque, claiming demurrage for the period between said 6th day of July, 1881, and the date of filing said libel under pretence that he was wrongfully detained because of the failure and default of libellants to order him to a safe port within the meaning of the charter party.

5th. These libellants allege that when said barque was fully loaded as aforesaid, to wit, on the said 6th day of July, 1881, they tendered to the master bills of lading for Aalborg, a port of Denmark, and a safe, direct port within the terms of the contract of charter, which bills of lading were in all respects in conformity with the terms and provisions of the charter party and such as said master was bound thereunder to sign when so required, but the master refused and still refuses to sign the same or to sail for said port, against which said refusal of the master these libellants have duly protested.

6th. That the port of Aalborg is a safe, direct port of Denmark within the direct terms and meaning of the charter party, and one

to which vessels of the same draught of water as said barque and of larger draught are habitually consigned and dispatched with petroleum and grain from the port of Baltimore and other
36 Atlantic ports of the United States, and to which such vessels do habitually and safely proceed and get and at which they may and do always lay and discharge afloat; that by the uniform custom and usage of trade between the said Atlantic ports and the ports of Norway and Denmark the said port of Aalborg is known and recognized as being and is universally known and understood by shippers and ship owners and masters to be such safe, direct port as aforesaid within the scope and meaning of the charter party in this case, and is universally understood and intended to be embraced as such a safe, direct port by the language and terms of said charter party, and to be within the meaning and intent of the same; of which usage, custom, and understanding libellants charge that said master was fully cognizant when said charter party was executed, and they say that he entered into the same accordingly with a view thereto and in conformity therewith, and became bound thereby to proceed to said port and sign bills of lading thereto when so ordered as aforesaid.

7th. That said cargo has been sold to arrive at Aalborg, and the result of said refusal of the master to sign said bills of lading and sail to said port is that said sale has been or will be wholly lost and these libellants be subject to damages for failing to comply with their said contract of sale, of which said master had and has full notice.

8th. That the market value of petroleum is declining, and, owing to said default of the master in refusing to sign said bills of
37 lading and sail for said port of Aalborg, said cargo has been left on the hands of these libellants on a falling market, whereby they have suffered great loss.

9th. That these libellants have been put to great and serious trouble and expense in putting said cargo on board of said barque and otherwise, and, owing to said default of said master, they will be compelled to unload said barque and put said cargo on another vessel, and thereby will incur other and greater trouble, loss, and expense, to their damage and injury.

10th. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court. The libellants therefore pray the court to decree in favor of their said claim, and that they recover against said barque all the losses, damages, and expense, whether general or special, incurred by them and such as will fully compensate them for all the losses arising in any way out of said breach of said charter party by the master.

And they claim damages $8,000; wherefore the libellants pray that process, in due form of law, may issue against the said barque "Gazelle," her boats, tackle, apparel, and furniture; that this honorable court will pronounce for their aforesaid claim, and that said barque, her boats, tackle, apparel, and furniture, may be decreed to be sold and the proceeds of such sale applied, as far as neces-
38 sary, to the payment of the same, and that they may have

such other and further relief as their case may require; and they will, &c.

S. T. WALLIS,
Proctor for Libellants.

MEM.—The charter party referred to in the above libel is the same as the one found on page 7½ of this record.

39 *Stipulation Bond. Filed 27 August*, 1881.

Know all men by these presents that we, Werner Dresel and Herman Rauschenberg, of Baltimore city, in the State of Maryland, are held and firmly bound unto Frederick Meissner, Charles F. Ackermann, and Charles F. T. Meissner, of New York, trading as Meissner, Ackermann and Company, in the full and just sum of seven thousand five hundred dollars, to be paid to said firm or the surviving partners or partner thereof or their personal representatives or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-seventh day of August, in the year eighteen hundred and eighty-one.

Whereas a libel has been filed, to wit, on the twentieth day of August, in the year eighteen hundred and eighty-one, against the Norwegian barque "Gazelle," of which one Herman Brun is master and part owner, in the district court of the United States for the district of Maryland by the above-named firm of Meissner, Ackermann & Company, claiming eight thousand dollars for an alleged breach of charter party, on which said libel process of attachment has issued and the said barque is now in the custody of the marshal under said attachment, and the said Herman Brun, the master
40 of said barque, on behalf of himself and the owners thereof, has applied for a discharge of said barque from the custody of the marshal, and has filed a claim claiming the said barque as master on behalf of the owners thereof:

Now, therefore, the condition of this obligation is such that if the said claimant and owners and the above-bounden Werner Dresel and Herman Rauschenberg shall abide and perform the decree of said district court and the circuit court of said district and the Supreme Court of the United States in the event of an appeal to either or both, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. DRESEL. [SEAL.]
H. RAUSCHENBERG, [SEAL.]
By W. DRESEL, *Att'y-in-Fact.*

Witnesses:
HENRY C. KENNARD.
H. S. BEELER.

41 *Answer. Filed 9th March,* 1882.

District Court for Maryland. In Admiralty.

Herman Brun, master and claimant of the barque Gazelle, files this answer to the cross-libel of Messrs. Ackermann and Company in this court exhibited.

This respondent admits as true the first and second articles of said libel.

This respondent admits as true the third article down to the words "and said vessel could," in line 9 of the article, and denies the rest of the third article. Respondent denies the 4th, 5th, and 6th articles, except as hereinafter in this article of the answer admitted, and avers that the truth in that respect is the following: That after the loading of the vessel, as in the 3rd article of the libel alleged, the libellants tendered respondent bills of lading ordering the vessel to Aalborg as the port of discharge; that respondent refused to sign said bills because Aalborg was not a safe Danish port, and because it was not such safe port for said vessel, and because it was impossible for the vessel to enter said port with cargo or in ballast or to land cargo at said port or at any anchorage near said port where the vessel could safely set and always lie and discharge afloat,
42 and respondent informed libellants of the reason of his refusal and offered to sign bills under protest as to port of discharge and to take in cargo to the nearest safe port to Aalborg; that libellants refused, ordering the vessel to Aalborg, and refused to name a safe port, and respondent did file, as alleged in 4th article of the libel, a libel against the cargo, and he avers that he did so with right, and refers to the allegations of his said libel as answer to this libel; and respondent further avers that said acts of libellants in so ordering the vessel and refusing to order her to a safe port as required by the charter were the sole reasons why the vessel did not sail with said cargo; that Aalborg is not a safe, direct Danish port for said vessel within the charter. Respondent denies that vessels of the draught of the Gazelle or of larger draught are habitually consigned and dispatched to Aalborg with petroleum and grain from Atlantic ports. He denies that such vessels do habitually and safely proceed to said port and always lay and discharge afloat there. He denies that by the uniform custom and usage of trade between Atlantic ports and the ports of Norway and Denmark the port of Aalborg is known and recognized as being and universally known by ship-owners and masters to be a safe Danish port. He denies that he ever heard or knew of any such custom, if it did exist, — is valid, legal, or material. Respondent has had no knowledge of the facts in 7th article, and leaves libellants to prove same. In answer to 9th and 10th articles respondent says that he does not know what damage libellants suffered by the refusal of respondent to go
43 to Aalborg. He denies the damage alleged in 9th and 10th articles.

A. STIRLING, JR.,
For Owners of Gazelle and Master.

Answers are filed without oath.

S. T. WALLIS AND
H. C. KENNARD,
For Libellants.

44 *Proceedings in the Circuit Court.*

Findings of fact and conclusions of law. Filed 22nd April, 1885.

In the Circuit Court of the United States for the District of Maryland. In Admiralty.

Appeal from the district court.

HERMAN BRUN, Master of the Norwegian Barque "Gazelle,"

vs.

3,131 BARRELS OF PETROLEUM, Cargo of the Barque,

And

MEISSNER, ACKERMANN & Co., Charterers,

vs.

THE BARQUE "GAZELLE."

Cross-Libels on Charter Party.

Findings of fact.

On June 16th, 1881, the barque "Gazelle," a sailing vessel of 571 tons burden, then in the port of Baltimore, Maryland, was chartered by Herman Brun, her master, to Meissner, Ackermann and Company, of New York, for a voyage, as stated in the charter party, to a safe, direct Norwegian or Danish port as ordered on signing bills of lading or as near thereto as she can safely get and always
45 lay and discharge afloat. Exhibit accompanying the libel is the said charter. Cargo of 3,131 barrels of refined petroleum was put on board by charterers at Baltimore, and on July 6th, 1881, charterers tendered the master bills of lading ordering the vessel to the port of Aalborg, on the eastern coast of Denmark. The master refused to sign the bills of lading on the ground, as stated by him to charterers, that Aalborg was not a safe port for a vessel of the tonnage of the "Gazelle," and that no vessel of such tonnage could enter the port even in ballast, and that there was no anchorage near the port where he could with safety lay and discharge. The charterers refused to order the vessel to any other port. Conversations and correspondence took place between the master and charterers and their agents. In all these the master insisted that he could take the cargo to the port of Aarhus, which he said was the only safe Danish port for a vessel of such tonnage as the "Gazelle," but he could not discharge at Aalborg or convey the cargo there. The charterers, on the contrary, insisted that he could and was bound to discharge at Aalborg. During this discussion between the parties and, on one day, the master said he would sign bills containing the words "as

near thereunto as the vessel can safely get and always lay and discharge afloat," but on the same day, upon charterers assenting to this, he refused, saying, in effect, that as he knew the fact to be that there was no place near Aalborg where he could safely lay and discharge, and as he knew beforehand that he would have to go
46 to the nearest safe port, he would not sign any bills of lading which might in any way commit him to anything else. The charterers all this time insisted that he should discharge at Aalborg, and did not agree to any receding from this in assenting to add the above words on the bills of lading, but still insisted on their right to have the vessel discharged at Aalborg.

Nothing was done in consequence of this proposition of the master or of his subsequent refusal as aforesaid, which in fact altered the position of the parties in any way.

The tonnage of the "Gazelle" was 571 tons, and she drew, when loaded, 16 feet 3 inches, and in ballast, 12 feet.

The port of Aalborg is in Denmark, on the south bank of the Limfiord, about 17 miles from its mouth at the Cattegat Sea. At the mouth there is a bar about 2,000 feet wide, on which there is ordinarily ten feet of water, and never more than eleven feet. Off the mouth of the Limfiord there is no sheltered bay nor any indentation of the coast, but the coast runs in a straight north and south line. It was not possible for the "Gazelle" to pass the bar either in ballast or with cargo, and the only place of anchorage for a vessel which cannot cross the bar is in the Cattegat Sea off the mouth of the Limfiord, and the only mode of discharge at said anchorage is into small sailing coasters, which can pass the bar to the port of Aalborg and carry the cargo. A considerable commerce has been carried on with the port from time immemorial by vessels of very small draught able to cross the bar when loaded.
47 Some steamers of larger draught have in late years traded regularly with the port from England.

These have lighters expressly made for their purpose, which they take in tow going out, receiving from them part of their cargo when over the bar, and in returning discharge into them sufficiently to lighten to 10 feet, and then tow the lighters in with them.

31 cargoes of petroleum and grain have been exported to Aalborg from the United States since 1876; none before that time. Many of these were in vessels of such size as to be able to cross the bar after lightening a reasonable amount.

Of these 31 vessels two or three in all, of large size, have discharged their whole cargo outside.

There existed at the time of the making of the charter a general custom in the Atlantic ports of the United States, with reference to charters similarly worded, that a ship may be ordered to any safe port within the range where commerce is carried on, whether she can get into it or not, provided there is an anchorage near the port customarily used in connection with it, and where it is reasonably safe for the ship to lay and discharge.

The port of Aalborg and the Limfiord inside the bar are safe for vessels that can get into them and lay afloat. The water inside the

bar in the Limfiord is deep, except at or near the town of Aalborg, but the said anchorage outside the bar in the Cattegat is not a reasonably safe anchorage nor a place where it is reasonably safe for a ship to lay and discharge.

48 The amount of freight under the charter for the cargo loaded was $3,285.60. The master incurred expense of $507.03 in removing and storing the petroleum cargo after the refusal of charterers to order vessel to any other port than Aalborg and $17.10 for wharfage and sixteen dollars for necessary towing.

The time required to perform such a voyage as that stated in the charter would have been about the same time as elapsed before the vessel procured another charter, which other charter was procured as soon as could have been done, and on the 2nd day of September, 1881, the vessel was ready to load under the recharter, and the expenses of the vessel in port were not less than on the voyage.

Conclusions of Law.

1st. That Herman Brun, libellant and appellee, is entitled to recover for breach of the charter party in the findings of fact mentioned damages in the sum of three thousand eight hundred and twenty-six dollars and thirteen cents, with interest from September 2nd, 1881, with costs in both courts.

2nd. That the libel of Meissner, Ackermann and Company
49 against the bark "Gazelle" should be dismissed, with costs to the claimants of the bark in both courts.

HUGH L. BOND,
Circuit Judge.

50 *Final Decree. Filed 22 April,* 1885.

In the Circuit Court of the United States for the District of Maryland.
In Admiralty.

HERMAN BRUN, Master of the Barque "Gazelle,"

vs.

3,131 BARRELS PETROLEUM

and

MEISSNER, ACKERMANN & Co., Charterers,

vs.

THE BARQUE GAZELLE.

Appeal of charterers from decree of the district court.

Cross-Libels on Charter Party.

This cause being finally heard and the pleadings, evidence, and arguments being duly considered, it is by the court, this 21 day of April, 1885, adjudged, ordered, and decreed that Herman Brun,

libellant and appellee, recover damages for breach of the charter party in the proceedings mentioned — the sum of three thousand eight hundred and twenty-six dollars and thirteen cents, with interest from September 2nd, 1881, with costs in both courts, and that Thomas Poultney, Jr., and William T. Poole, stipulators for 3,131 barrels of petroleum, cargo of the barque "Gazelle," pay the amount of
51 their stipulation, being $3,737.00, to said libellant or his proctor within ten days from the date hereof, and that the claimant and respondent pay the balance of said damages and the interest as aforesaid and costs within ten days from the day hereof; and it is further adjudged, ordered, and decreed that the libel of Meissner, Ackermann and Co. against the barque "Gazelle" be, and the same is hereby, dismissed, with costs to the claimants of the barque in both courts.

HUGH L. BOND,
Circuit Judge.

52 *Prayers of Appeal to Supreme Court, &c. Filed* 23 *April,* 1885.

In the Circuit Court of the United States for the District of Maryland.

HERMAN BRUN *vs.* 3,131 B'LS PETROLEUM.

The claimants and stipulators in the above-entitled case pray an appeal to the Supreme Court of the United States from the decree of the circuit court, dated April 21st, 1885, awarding damages and costs to the libellant.

S. T. WALLIS AND
HENRY C. KENNARD,
Proctors for Cl'm'ts & Stipulators.

Let the appeal be allowed as prayed.

HUGH L. BOND,
Circuit Judge.

Citation waived.

A. STIRLING, JR.,
Proctor for Libellant.

53 *Prayers of Appeal to Supreme Court, &c. Filed* 23 *April,* 1885.

In the Circuit Court of the United States for the District of Maryland.

MEISSNER, ACKERMAN & CO. *vs.* BARQUE GAZELLE.

The libellants in the above-entitled case pray an appeal to the Supreme Court of the United States from the decree of the circuit court, dated April 21st, 1885, dismissing the libel of libellants.

S. T. WALLIS AND
HENRY C. KENNARD,
Proctors for Libellants.

Let the appeal be allowed as prayed.

HUGH L. BOND,
Circuit Judge.

Citation waived.

A. STIRLING, JR.,
Proctor for Claimant.

54 *Appeal Bond. Filed* 30 *April,* 1885.

Know all men by these presents, that we, Thomas Poultney, Jr., and Walter de C. Poultney, of Baltimore city, State of Maryland, are held and firmly bound unto Herman Brun in the full and just sum of two thousand five hundred dollars, current money, to be paid to the said Herman Brun, his certain attorney, executors, administrators, or assigns; — the payment of which, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of April, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately, at a circuit court of the United States for the fourth circuit in and for the district of Maryland, in the suits depending therein between Frederick Meissner, Charles F. Ackermann, and Charles F. L. Ackermann, appellants, and the claimant of the barque "Gazelle," appellee, in one case, and the claimants of 3,131 barrels of petroleum, cargo of the barque "Gazelle," appellants, and Herman Brun, master of the said barque "Gazelle," appellee, in the other case (said suits being cross-libels in admiralty), a decree was passed in said cases in favor of the appellee, from which said decree the said appellants have prayed and obtained an appeal to the next
55 term of the Supreme Court of the United States to be held at the city of Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Frederick Meissner, Charles F. Ackermann, and Charles F. L. Ackermann, the appellants, shall prosecute their appeal with effect and pay all damages and costs that may be adjudged against them in case they fail to make good their said plea, then the above obligation to be void; otherwise to remain in full force and virtue.

THOS. POULTNEY, JR. [SEAL.]
WALTER DE C. POULTNEY. [SEAL.]

Signed, sealed, and delivered in presence of—
HENRY T. MELONEY.

The foregoing bond is thus endorsed: "Bond approved. Hugh L. Bond, circuit judge."

Thereupon it is ordered by the court here that a transcript of the record and proceedings aforesaid, made in accordance with rule 8, sec. 6, of the rules of the Supreme Court, be transmitted to the Su-